S.B. Civil Writ Petition NO.2956/2004
(Ahok Kumar & Ors. Vs. State & Anr.)

Date of order : 25.5.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vijay Chahar, for the petitioners.
Mr. S.N. Tiwari, Dy. Govt. Advocate.
Mr. R.K. Singhal, for the respondents.

By way of filing the present writ petition, the petitioners have challenged the judgment dated 22.12.2003 passed by Additional Collector (Administration), Sri Ganganagar while exercising the revisional power under Section 97 of the Rajasthan Panchayati Raj Act.

The facts inter alia stated in the writ petition are that petitioners were allotted land free of cost in Village Fathui by the Gram Panchayat Shivpur Fathui vide order dated 7.9.1996. The said allotments were challenged by way of filing revision petition before Addl. District Collector (Admn.), Sri Ganganagar by respondents Nos.5 and 6 wherein it was specifically mentioned that without following the due process of law, the allotment of land measuring 1776 yard and 560 yard was allotted respectively to the petitioners free of cost by the Gram Panchayat and it was also specifically mentioned in the revision petition that the Gram Panchayat has allotted the land to the petitioners which is part of land of “राज दौलत

भण्डार". The land which was allotted to the petitioners is not 'aabadi' land, therefore, the whole proceedings undertaken by the Gram Panchayat was illegal. It was also stated in the revision petition that the land allotted to all these petitioners free of cost is not 'aabadi' land, meant for allotment by the Gram Panchayat.

After hearing both the parties, the Addl. Collector (Admn.) has passed the order impugned dated 22.12.2003 in which it is observed that the land which was allotted to the petitioners is not 'aabadi' land but it is part of "राज दौलत भण्डार", therefore, the land which is not available for allotment has been allotted in favour of the petitioners. It is also observed that the procedure which was undertaken by the Gram Panchayat for the purpose of allotment of land is also totally in violation of the provisions of the Rajasthan Panchayati Raj Act and the Rules made thereunder. It is also observed that no record was placed before the Addl. District Collector (Admn.) by the Gram Panchayat nor it was maintained by the Gram Panchayat.

The revisional authority further observed that the files for allotment of the land was not maintained by the Gram Panchayat and, in the absence of any such documentary evidence, it is obvious that whole allotment was illegal and was in contravention

of the provisions of the Rajasthan Panchayati Raj Act and the rules framed thereunder.

Learned counsel for the petitioners has challenged the impugned order on two counts; firstly, that the Addl. District Collector has no jurisdiction to hear the revision petition under Section 97 of the Rajasthan Panchayati Raj Act in view of the notification dated 8.9.2003 by which the revisional power delegated under Section 97 of the Act was rescinded w.e.f. 1.2.2002 and the impugned judgment was passed on 22.12.2003; secondly, that the allotment was made in the year 1996 and the revision petition was preferred by the non-petitioners after long delay, which is barred by limitation under Section 97 (3) of the Rajasthan Panchayati Raj Act.

While filing reply, the State Government has brought to the notice of the Court that the first contention raised by the learned counsel for the petitioners with regard to jurisdiction of the Collector for exercising powers under Section 97 of the Act is totally wrong on the ground that the day on which the judgment was passed, the District Collector was competent because on 13.12.2004, the State Government, while issuing notification Annexure-R/1 filed alongwith the reply, restored the power to the District Collector w.e.f. 1.2.2002. Therefore, there is no force in the contention of the petitioner with

regard to jurisdiction. Secondly, with regard to the point of limitation, it is contended that no such ground was raised by the petitioners before the Addl. District Collector at the time of adjudicating the revision petition. It is further submitted that though the legal ground can be raised at any stage but looking to the facts and circumstances that the Gram Panchayat has allotted the land of "राज दौलत भण्डार" which was not available for allotment, so also, the Gram Panchayat without following the due process of law and even without maintaining the record allotted the land, therefore, the question of limitation was treated to be deemed to be condoned by the Addl. District Collector at the time of passing the impugned order on merit of the case.

I have considered the rival submissions made by the learned counsel for the parties.

It is not disputed before this Court or before the Addl. District Collector (Admn.) that land was part of "राज दौलत भण्डार" land. It is also not disputed that the land, which was allotted to the petitioners was not 'aabadi' land, therefore, admittedly, the Gram Panchayat has allotted the land, which was not available for allotment, therefore, whole proceedings for allotment of land was taken up in contravention of the provisions of Rajasthan

Panchayati Raj Act and the rules framed thereunder. Therefore, on this admitted position, there is no merit in the contention of the learned counsel for the petitioners that the judgment is erroneous. Secondly, upon the question of jurisdiction, in view of the subsequent notification dated 13.12.2004, there is no force in the contention of the learned counsel for the petitioners that revisional power exercised by the respondent No.2 was without jurisdiction.

With regard to the question of limitation, though, the revision petition was filed after expiry of limitation as prescribed under Section 97 (3) of the Act but this ground was not taken before the respondent No.2 at the time of adjudication of the revision petition and the petitioners contested the matter before the revisional authority on merit. The petitioners are raising the ground of limitation before this Court for the first time. In my opinion, it is true that the limitation is prescribed under Section 97 (3) of the Act but looking to other facts and circumstances of this case that allotment was made by the Gram Panchayat without following the process of law and without maintaining the record of proceedings of allotment/auction and more specifically, the allotment was made for the land, which is admittedly the part of land of “राज दौलत भण्डार", so also, it is not 'aabadi' land, therefore, in such circumstances, the revision petition, filed after the time prescribed for

limitation is required to be treated as deemed to have been condoned because basic illegality is committed by the statutory authority while allotting the land which was not 'aabadi' land and the question was not raised before the authority while contesting the matter on merit of the case.

Learned counsel for the petitioners has invited the attention of this Court towards certain judgments with regard to limitation and prayed for setting aside the impugned order and to remit this case to the Addl. District Collector (Admn.) with a direction that he should decide the question of limitation first and then, the matter may be decided afresh. I am unable to accept such prayer because allotment was made in favour of the petitioners without complying with the provisions of law, so also, the land which has been allotted to the petitioners was not available for the purpose of allotment. Likewise when whole proceeding of allotment was illegal and in contravention of the provisions of the Rajasthan Panchayati Raj Act and the rules framed thereunder and neither any record was submitted before the revisional authority nor it was maintained by Gram Panchayat. Then, in such circumstances, in my opinion, the petitioners cannot be given benefit of any technicality with regard to limitation, so also, it has already been observed in the foregoing paragraphs that in this matter, the question of

limitation, which has been raised for the first time before this Court, shall be treated to be deemed to have been decided in favour of the non-petitioners and, thus there is no question to remit the case to the revisional authority for afresh decision because according to the merits of the case also, no case for interference with the impugned order is made out.

In these circumstances, I find no ground for interference with the Judgment impugned dated 22.12.2003 passed by Addl. District Collector (Admn), Sri Ganganagar for cancellation of allotments made by the Gram Panchayat in flagrant violation of law. Accordingly, the writ petition is dismissed.

(GOPAL KRISHAN VYAS), J .

arun